**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION No.6133 OF 2006**

February 19, 2007.

Between:

Dr. Kodali Rama Krishna. .. Petitioner.

And

The Union of India, represented by its Secretary, Health and Family Welfare Department, Nirman Bhavan, New Delhi and others. ..Respondents.

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION No.6133 OF 2006**

**ORDER:**

This writ petition is filed aggrieved by the action of the 3rd respondent in declaring the 4th respondent elected as the Member of the Medial Council of India under Section 3 (1) (b) of the Indian Medical Council Act, 1956, to represent the NTR University of Health Sciences, Vijayawada in the General Body of the Medical Council of India.

Section 3 of the Indian Medical Council Act, 1956 (for short, 'the MCI Act') provides for the constitution and composition of the Medical Council of India. As per clause (b) of sub-section (1) of Section 3 of the MCI Act, the Medical Council of India shall consist of one member from each University in India to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University.

The 3rd respondent herein – the Registrar of NTR University of Health Sciences, who was appointed as Returning Officer for conducting the election in terms of Section 3 (1) (b) of the MCI Act, issued the notice of election dated 4-2-2006 calling for nominations from the faculty members of the Medical Sciences working in all

affiliated Medical Colleges of NTR University of Health Sciences (for short, 'the University') for the election scheduled to be conducted on 22-3-2006 at 11.30 am. As per the election notice, 15-3-2006 was the last date for submission of nominations and Scrutiny of nominations was on 15.3.2006 at 4.00 pm. The list of valid nominations was scheduled to be displayed on 17.3.2006 whereas the election was scheduled on 22.3.2006 at 11.30 a.m.

As per the list of valid nominations displayed, five candidates were in the fray including the 4th respondent herein who is the Vice-Chancellor of the University.

The writ petitioner who is working as Assistant Professor of Medicine at NRI Medical College, Chinna Kakani, Guntur District was also one of the contestants.

It is also not in dispute that the election was conducted as per the schedule on 22-3-2006 and the 4th respondent who secured 107 votes was declared elected.

The petitioner states that he raised an objection about the eligibility of the 4th respondent on 16-3-2006 itself alleging that the 4th respondent who is not a faculty member is not eligible to file his nomination. It was alleged that the 4th respondent was also ineligible since he was appointed on deputation from the Central Government service having a lien in his parent department and his pay was also protected at the time of joining the University as Vice-Chancellor.

The petitioner contended that the 3rd respondent being the subordinate to the 4th respondent had deliberately ignored the objections raised by the petitioner and completed the election process illegally. It is also contended that the conduct of the 4th respondent in presiding over the meeting of the Senate members held on 22-3-2006 and allowing the members TA/DA had resulted in manifest injustice to other participants. Hence, this writ petition to declare the 4th respondent as ineligible to contest and consequently to direct the

respondents 1 to 3 to conduct re-election.

On behalf of the 3rd respondent-Returning Officer, a counter affidavit has been filed denying all the allegations made by the petitioner and stating that the 4th respondent being the administrative head of the University is empowered to pass necessary orders in the matter of conducting elections. The objection that the 4th respondent was not a faculty member and therefore was ineligible to contest was considered and found to be without any legal basis. It is further stated that on several occasions the Vice-Chancellors of the University had contested the elections during their tenure as Vice-Chancellors and that having been elected, they had represented the University in the Medical Council of India. The fact that the 4th respondent had chaired the meeting of the Academic Senate held on 23.3.2006 has not been disputed, however, it is stated that as per the Statute of the University, the Vice-Chancellor is the Chairman of the Academic Senate and, therefore, he is entitled to chair the meeting of the Senate. Elections were conducted strictly in accordance with the statutory provisions and the 4th respondent, who secured 117 votes, as against 50 votes secured by the petitioner, was rightly declared elected. No complaint was received from any of the members of the Academic Senate as to the procedure adopted by the 3rd respondent.

The 4th respondent filed a separate counter affidavit on the same lines categorically denying the allegation that he is ineligible to contest the election.

On behalf of the Union of India, a counter affidavit has been filed stating that as per the provisions of the Act and the Rules made thereunder, the Vice-Chancellor of the University is not precluded to represent the University as a member in the Medical Council of India.

I have heard the learned counsel for both the parties and perused the material on record.

Section 3 (1) (b) of the Indian Medical Council Act, 1956 may be extracted hereunder :

*"**3. Constitution and composition of the Council:--** (1) The Central Government shall cause to be constituted a Council consisting of the following members, namely:--*

*(a) ... ... .... .... .... .... ....*

*(b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no Senate by members of the court;*

*... ..... ..... ..... ..... ..... ...."*

On a reading of the above provision, it is clear that the member of the Medical Council of India shall be elected from amongst the members of the medical faculty of the University by the members of the Senate of the University.

As noted above, one of the objections raised by the writ petitioner is that the 4th respondent is holding only an administrative post and therefore he cannot be considered as a member of the Medical Faculty of the University and, consequently he is not eligible to contest under Section 3(1)(b) of the Act.

It is contended by the learned counsel for the petitioner that the 4th respondent-Vice Chancellor of the University-being an ex-officio member of the Academic Senate though entitled to vote, he is ineligible to contest, since he is not a member of the medical faculty of the University.

The University of Health Sciences Act, 1986 (for short, 'the University Act') provides for establishment and incorporation of a teaching and affiliating University in the State of Andhra Pradesh. Section 3 of the University Act provides for constitution of University, which shall consist of a Chancellor, a Vice-Chancellor, a Rector, if any, an Executive Council and an Academic Council. Sub-section (3) of Section 3 of the University Act made it clear that the University shall be a teaching and affiliating University. As per Section 12 (2) of the University Act, the Vice-chancellor shall be the Principal Executive and Academic Officer of the University and shall exercise general

supervision and control over the affairs of the University. Sub-section (4) of Section 12 of the University Act provides that the Vice-chancellor shall exercise such other powers and perform such other functions as may be prescribed by the Statutes or Ordinances. Section 20 of the University Act provides that the Academic Council of the University shall be the principal Academic Body of the University.

Clause (1) of the Statute of the University made in exercise of the powers conferred under Section 30 of the University Act provides that the Vice Chancellor shall be a whole time officer of the University and that he shall be a Member and Chairman of the Academic Council. Clause (8) of the Statute which provides for powers and functions of the Academic Council made it clear that the powers of the Academic Council include general control of teaching within the University which shall be responsible for the maintenance of the standards thereof.

On a combined reading of the above provisions, and particularly in the absence of any specific provision under the University Act prohibiting the Vice Chancellor of the University to take up teaching, there is absolutely no reason to hold that the Vice Chancellor of the University is not a member of the Medical Faculty of the University. On the other hand, in the light of the provisions referred to above, which made it clear that the Vice Chancellor is an Academic Officer of the University, it shall be deemed that the Vice-Chancellor is a member of the medical faculty. As a matter of fact, in the counter-affidavit filed by the 3rd respondent it is stated that in case of contingency the Vice Chancellor is bound to act as a teacher and that the 4th respondent has been conducting Seminars and Workshops regularly on par with other faculty members in the affiliated colleges of the University.

The counter-affidavit of the 4th respondent shows that he had served in various colleges of National status like Jipmer, Pondicherry, PGIBMS, Taramani, Madras, Banaras Hindu University, Varanasi. He worked in various positions like Demonstrator, Lecturer, Assistant

Professor, Associate Professor, Professor, Rector & Principal for more than 25 years. He had also acted as resource person (faculty) in the Teachers Training Programmes conducted in the University. Even after appointment as the Vice Chancellor of the University he has been delivering guest lectures in various colleges in the State and also conducting training programmes for medical teachers in the University at Vijayawada. The 3rd respondent's counter-affidavit supports the said version and even the petitioner has not disputed the same.

It is true that the 4th respondent belongs to the teaching sub-cadre of Central Health Service (CHS) and that he is holding the post of Vice Chancellor of the NTR University of Health Sciences on deputation. However, the fact that the pay of the 4th respondent is protected and that the lien of the 4th respondent is subsisting in his parent department does not affect the nature of the 4th respondent's office in the University. As expressed above, admittedly the 4th respondent is a distinguished educationist in the field of medicine, and as Vice-Chancellor, he is the chief academic officer of the University, who exercises general supervision and control over the academic affairs of the University. Hence, there is absolutely no justifiable reason to hold that he is not a member of the medical faculty of the University.

It is also relevant to note that either Section 3(1)(b) of the MCI Act or any other provision under the Act and the Rules made thereunder does not preclude the Vice-Chancellor of the University to represent the University as member in the MCI. In the counter-affidavits filed on behalf of the 2nd respondent-Medical Council of India and the 3rd respondent, it is explained that in the previous years the Vice-Chancellors of the University had contested the elections on many occasions and they were elected and represented the University in the MCI.

Viewed from any angle, the objection raised by the petitioner as

to the eligibility of the 4th respondent on the ground that he is not a member of the Medical Faculty is untenable.

So far as the allegation that the 3rd respondent, being the subordinate to the 4th respondent, is not entitled to be appointed as the Returning Officer is concerned, it is to be noted that as per Rule 3(2) of the Indian Medical Council Rules, 1957, the Registrar of the University concerned is competent to hold election and such Returning Officer will have absolute power in the matter of conducting election in a fair manner. Hence, the mere fact that the 3rd respondent is subordinate to the 4th respondent did not vitiate the election process in any manner whatsoever in the absence of any specific allegation that the 3rd respondent was influenced by the 4th respondent.

The fact that the 4th respondent had presided over the meeting of the Academic Senate held on the date of election i.e., 22.3.2006 and allowed the members to claim TA/DA cannot be said to have caused any prejudice to the petitioners or any other participant. The 4th respondent in the capacity of the Chairman of the Academic Senate had chaired the meeting on 22.3.2006; whereas the election was conducted independently by the 3rd respondent in terms of Section 3(1)(b) of the MCI Act. All the members of the Academic Senate are entitled for TA/DA whenever they attend the meetings of the Academic Senate. Hence, the election cannot be said to have been vitiated on that ground.

It is also relevant to note that Rule 25 of the Indian Medical Council Rules, 1957, provides an alternative remedy of raising an objection before the Central Government within 30 days from the date of the returned candidate as declared in the election. Having failed to avail such an efficacious Statutory remedy, the petitioner, who is an unsuccessful candidate, cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Hence, on that ground also the writ petition is liable to be rejected.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly, dismissed. No costs.

19.2.2007.

Kgr/gbs